

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF PUERTO RICO

IN RE:

CARMEN A. TORRES COLLAZO

CASE NO. 10-12036 (SEK)

CHAPTER 13

**RESPONSE TO TRUSTEE'S UNFAVORABLE REPORT ON CONFIRMATION  
TO THE HONORABLE COURT:**

**COMES NOW** the Debtor through their undersigned counsel who very respectfully states, alleges and prays as follows:

1. On May 18, 2011, the Chapter 13 Trustee filed an Unfavorable Report on Confirmation (Docket 30).
2. Trustee's objections to the confirmation of debtor's plan dated May 13, 2011 are:
  - (a) "Debtor intends to modify mortgage through the Chapter 13 plan";
  - (b) "Debtor must amend the plan to provide for the submission of tax refund on a yearly basis";
  - (c) "Plan language fails to provide secured creditor with a clear, open and explicit statement of its treatment under the plan and how its rights are affected by the same";
  - (d) "Debtor has failed to submit appraisal report for property"
3. For the reasons stated herein it is respectfully requested from this Honorable Court to confirm debtor's plan dated May 13, 2011 (Docket 27).

**A. Modification of secured claim.**

4. First of all, it must be pointed that the bankruptcy code does allow the modification of secured claims. Section 1322 (b)(2), which trustee cited in its report, reads that **"the plan may modify the rights of holders of secured claims,** other than a claim secured only

by a security interest in real property that is the debtor's principal residence" (our bold). The anti-modification provision of section 1322 bars the modification of a claim secured **solely** by *real property that is the debtor's principal residence*. If the claim is secured by other property besides debtor's principal residence then the anti-modification provision of §1322 (b) (2) is inapplicable, and the debtor is permitted to modify the rights of the secured creditor. In re Scarborough, 461 F. 3d. 406 (3<sup>rd</sup>. Cir. 2006)

5. In the instant case, it is debtor's position that Doral's secured claim has other collateral besides debtor's principal's residence and, as such, the debtor is permitted to modify the terms of the mortgage. In Schedule A, the debtor describe its real property as follows: "1 Acre of land with a two story house; Additional separated apartment unit in the property with 2 bed 1 bath; Additional separated office unit in the property with 3 bed 1 bath; 1,000 meters of land rented as storage".

6. Debtor's position is that since Doral's claim is secured by other income producing properties **in addition** to debtor's principal residence, the debtor may modify the terms of the mortgage.

7. Although we understand trustee duty to ascertain that chapter 13 plans comply with all applicable sections of the code, we respectfully believe that the trustee has no standing to object to the confirmation of a plan that proposes a modification of a secured claim when the creditor holder of such claim has not objected the plan. Based on the former we respectfully request the court to deny trustee objection and confirm the plan.

**B. Submission of tax refund on a yearly basis.**

8. The debtor has submitted an amended plan to provide for tax refunds on a yearly basis.

**C. Plan language is adequate, open and explicit.**

9. It is debtor's position that both the original plan dated January 7, 2011 (Docket 11) and the amended plan dated May 13, 2011, provide the secured creditor with a clear, open and explicit statement of its treatment under the plan. The second page of the plan gives a specific, number-crunched statement of how the debtor intends to modify the mortgage. It also mentions directly the name of the creditor who holds the claim to be modified. Both plans were served on the secured creditor, and the creditor filed its proof of claim. The plans have not been objected by the secured creditor, despite the clear, open and explicit language of the plan. Therefore, the creditor must be considered to have accepted the plan.

10. Based on the former it is respectfully requested from this Honorable Court to deny trustee's objections and confirm the plan.

**D. Appraisal report.**

11. The debtor submitted the appraisal report requested at the 341 meeting on March 23, 2011. (Exhibit A). Notwithstanding, the debtor will upload the document again to the trustee's electronic document system.

**WHEREFORE** debtors respectfully request this Honorable Court to consider debtor's reply to trustee unfavorable report and enter an order confirming debtor's plan dated May 13, 2011 (Docket 27).

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will automatically send notification of such filing to all CM/ECF parties in the above captioned bankruptcy proceeding.

In San Juan, Puerto Rico, this 23 day of May of 2011.

*s/ Eduardo J. Mayoral García*  
**EDUARDO J. MAYORAL GARCÍA**  
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